"potentially burdensome" when sought directly from parties to the litigation who stand to be awarded a substantial judgment, surely the Orders of the Southern District of New York do not compel a ruling that the same, and even more tenuously related documents, be produced by third parties.

With regard to Document Request 2, which seeks "all communications," Defendants advance scattershot theories of relevance. All of these theories need to be viewed against the reality that Plaintiffs have already been ordered to produce their communications with MySpace. (Issues regarding the duplicative discovery requested are addressed more thoroughly *infra* Section III.B.2.) They argue that they need to know Plaintiffs' "lost revenues," arising from Defendants' massive infringement of Plaintiffs' works. But those "lost revenues" are shown only by the *agreements* that Plaintiffs have already produced (and MySpace has indexed). Communications related to those agreements would shed no further light.

Defendants next argue that communications may be relevant to the sixth statutory damages factor under *Bryant v. Media Rights Prods., Inc.*, 603 F.2d 135, 144 (2d Cir. 2010) – the "conduct and attitude of the parties." That factor calls for, at most, evaluation of the parties' (*i.e.*, the Plaintiffs' and Defendants') attitude and conduct, not the attitude and conduct of third parties. To the extent communications are relevant to show the Plaintiffs' attitude and conduct, Plaintiffs have been ordered to produce them. In light of their "tenuous" (at best) relevance

and the burden it would impose on MySpace, a non-party, MySpace should not be ordered to produce them again.

Plaintiffs do not seek to argue in this section that MySpace's internal communications are relevant, but they have made it clear elsewhere that they believe such communications are within the scope of their requests. *See infra* section III.B.1. ("the Subpoena requires production of documents that would not be in Plaintiffs' possession, such as internal MySpace communications regarding licensing agreements or negotiations with any Plaintiffs concerning agreements, including notes of meetings between representatives"). Plaintiffs' failure to offer a theory of relevance to support this request is sufficient to defeat their motion. In any event, as this Court has held, third parties' opinions of the value of Plaintiffs' works are irrelevant to any issue in the underlying case. Gottlieb Decl. Ex. 25 at 2 (Order of The Honorable Patrick J. Walsh, *Arista Records LLC et al., v. Lime Wire LLC, et al.,* No. CV 10-9438-GW (PJWx), December 22, 2010, at 2 ("Though the documents and deposition may provide insight into MediaDefender's attitude, MediaDefender is not a party to this action and its attitude is irrelevant."). This ruling is in line with Ninth Circuit precedent, which condemns service of third-party subpoenas to seek what is essentially opinion evidence. *Mattel Inc. v. Walking Mountain Productions,* 353 F.3d 792, 814 (9th Cir. 2003) (referring to 1991 amendment notes to Fed. R. Civ. P. 45, which identify "a growing problem [in the] use of subpoenas to compel the giving of evidence and information by

unretained experts."). Plaintiffs have no cognizable theory of relevance to justify MySpace producing any "communication," in response to Request Number 2, warranting denial of their Motion as to that Request.

With regard to Document Request 6, which seeks documents "concerning Defendants" or the LimeWire application, not a single word in Defendants' Motion explains the relevance of such documents. Nor did Defendants ever seek to explain the relevance of this request during their claimed "meet-and-confer" process. *See* Kozusko Decl. Ex. 6 (listing categories of documents sought, with no mention of documents containing "LimeWire"). To the extent such documents overlap with the "communications" sought in Request 2, they fail for the same reasons. Insofar as they include a different set of documents, Plaintiffs have waived the opportunity to obtain them in this Motion by failing to offer a theory of relevance.

Nor is the order regarding VEVO of any assistance to Plaintiffs. Despite Defendants' attempt to characterize it otherwise, Magistrate Judge Freeman entered an order ratifying a compromise proposed by VEVO itself, over Defendants' objection. Kozusko Decl. Exs.11, 18. Whatever reasons Vevo may have had for proposing its compromise, the burden it undertook in producing that material is not comparable to the burden the subpoena would impose on MySpace. Among other differences, VEVO has only been in existence for about a year, in contrast to the "four year plus" scope of the subpoena served on MySpace. In

ratifying the compromise proposed by VEVO, Magistrate Judge Freeman did not rule on any issue of relevance, cumulativeness, or burden raised by MySpace here.

In sum, Plaintiffs have not met their burden to show that the "tenuous" relevance of documents already produced and the nonexistent relevance of MySpace's internal documents justify requiring production pursuant to either Request at issue.

B. Scope Of Documents Obtainable From A Non-Party

1. Defendants' Contentions and Points and Authorities

MySpace has also objected to the Subpoena on the grounds that Defendants are "not entitled to obtain [from MySpace] documents equally obtainable from parties to the litigation." (Kozusko Decl., Ex. 5.) That objection is wrong on both the facts and the law.

Defendants served the Subpoena, in part, because Plaintiffs have failed to produce all documents concerning their relationship with MySpace, and, in part, to gain access to documents that, regardless, would not be in Plaintiffs' possession. Indeed, the Subpoena requires production of documents that would not be in Plaintiffs' possession, such as internal MySpace communications regarding licensing agreements or negotiations with any Plaintiffs concerning agreements, including notes of meetings between representatives of MySpace and Plaintiffs.

Even if the Plaintiffs ultimately did provide Defendants with their versions of certain documents requested by the Subpoena, there is nothing in the

Federal Rules of Civil Procedure preventing Defendants from seeking MySpace's versions and collections of those documents at this juncture. Indeed, the argument advanced by MySpace here has been repeatedly rejected:

> Sony Electronics further alleges the documents sought by Plaintiff's Subpoena are duplicative in that these documents are readily attainable from the defendants in the underlying matter. The Court finds this argument unavailing, particularly in light of Plaintiff's desire to test the accuracy and completeness of the defendants' discovery responses and their denials that additional information exists. Thus, Sony Electronics shall produce all responsive documents even if they are duplicative.

LG Display Co., Ltd. v. Chi Mei Optroelectronics Corp., No. 08-cv-2408, 2009 WL 223585, at *3 (S.D. Cal. Jan. 28, 2009). *See also In re Honeywell Int'l, Inc. Sec. Litig.*, 230 F.R.D. 293, 301 (S.D.N.Y. 2003) (holding a non-party must produce documents in response to a subpoena even though they were seemingly duplicative of discovery requests served on the other party because "[t]he documents in [the non-party's] possession may differ slightly from [the other party's] copies" and the non-party's "copies could include handwritten notes, and the fact that [the non-party] has copies of documents itself can be relevant."); *Composition Roofers Union Local 30 Welfare Trust Fund v. Graveley Roofing Enters., Inc.*, 160 F.R.D. 70, 71-72 (E.D. Pa. 1995) (denying motion to quash plaintiffs' non-party subpoena because although defendant had been ordered to produce the same documents, defendant failed to produce them and therefore "the information Plaintiffs requested cannot be more easily obtained from Defendant"

due to defendant's refusal to provide the documents).

In any event, as discussed in detail below (*see* Issue III.C., *infra*) Defendants have negotiated in good faith with MySpace's counsel to make the production of responsive documents as minimally burdensome as possible for MySpace, *e.g.*, by proposing the use of targeted search terms on the files of selected custodians in order to pinpoint potential responsive documents. (Kozusko Decl. ¶¶ 16, 21, Exs. 12, 18.) MySpace has neither agreed to do any of that nor proposed any alternatives for complying with its obligations under the Subpoena, leaving Defendants no option but to seek relief from this Court. (*See id.* ¶ 21.)

2. MySpace's Contentions and Points and Authorities

Defendants seek to justify their demand that MySpace produce duplicative documents on shifting grounds. The documents they seek are different ("internal MySpace communications"), they argue. Or perhaps the documents are the same (citing *LG Display Co., Ltd.*, 2009 WL 223585, at *3). Or perhaps they are slightly different (citing *In re Honeywell Int'l, Inc. Sec. Litig.*, 230 F.R.D. at 301 and *Composition Roofers Union Local 30 Welfare Trust Fund*, 160 F.R.D.at 71-72). None of these stabs reaches the mark.

At bottom, this Court possesses broad discretion to deny discovery if, as here, the material sought is "unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive." Fed. R. Civ. P. 26(b)(2)(C); *see also, e.g., Bayer AG v. Betachem,*

Inc., 173 F.3d 188 (3d Cir. 1999). When combined with the mandate of Rule 45 that parties issuing subpoenas seek to avoid undue burden on third parties, it makes sense that Courts consistently hold that parties must seek discovery from the opposing party before seeking the same documents from non-parties. *See, e.g., Haworth, Inc. v. Herman Miller, Inc.*, 998 F.2d 975, 978 (Fed Cir. 1993) (district court properly required defendant to seek discovery from plaintiff before burdening non-party); *Nidec Corp.*, 249 F.R.D. at 577 ("There is simply no reason to burden nonparties when the documents sought are in possession of the party defendant"); *Moon v. SCP Pool Corp.*, 232 F.R.D. 633, 637-38 (C.D. Cal. 2005) ("Weighing the burden to nonparty KSA against the value of the information to plaintiffs, the Court finds the subpoena imposes an 'undue burden' on nonparty KSA [because] . . . these requests all pertain to defendant, who is a party, and thus plaintiffs can more easily and inexpensively obtain the documents from defendant."); *Instituform Technologies, Inc. v. Cat Contracting, Inc.*, 914 F. Supp. 286, 297 (N.D. Ill. 1996) (plaintiffs not permitted to seek information from non-party obtainable from defendants).

Once discovery has been obtained from the party to the litigation, courts have recognized that otherwise cumulative discovery from third parties may be permissible in one of two situations: (1) where the proponent of discovery can demonstrate reason to believe that the discovery received from the party is incomplete (as in *LG Display Co.* and *Composition Roofing*); or (2) where the

variations of documents that might be in third parties' control have relevance to the litigation (as in *In re Honeywell Int'l)*. Here, neither of these categories applies. Defendants present no evidence or even argument that their adversaries in litigation – legitimate, longstanding companies represented by able counsel – have failed to produce the documents required under Judge Wood's order of November 19. *See generally* Kosuzko Declaration. And, as discussed *supra* , any documents uniquely in MySpace's possession (or annotated versions of documents) are irrelevant to the issues in the litigation.

To resolve this issue, the Court need not make any broad determinations regarding whether duplicative discovery is *ever* available from a third party. It need only hold that such duplicative discovery is inappropriate here, given the lack of relevance of such material, the substantial burden required to produce it, and the fact that evidence even "tenuously" relevant can be (and has been) obtained directly from Plaintiffs in the litigation. MySpace respectfully submits that denial of the motion for these reasons is the correct outcome on these facts.

C. Undue Burden

1. Defendants' Contentions and Points and Authorities

MySpace has objected to the Subpoena on the grounds that it is "unduly burdensome on its face." (Kozusko Decl., Ex. 5.) That objection is without merit, for the reasons that follow.

In order to evaluate undue burden -- which MySpace, as the objector here, bears the obligation of proving[5] -- courts weigh the burden to the subpoenaed party against the value of the information to the serving party. *Bridgeport Music, Inc. v. UMG Recordings, Inc.*, No. 05 Civ. 6430, 2007 WL 4410405, at *2 (S.D.N.Y. Dec. 17, 2007). *Bridgeport* explains that "[w]hether a subpoena imposes an 'undue burden' depends upon 'such factors as relevance, the need of the party for the documents, the breadth of the document request, the time period covered by it, the particularity with which the documents are described and the burden imposed." *Id.* (quoting *Travelers Indem. Co. v. Metro. Life Ins. Co.*, 228 F.R.D. 111, 113 (D. Conn. 2005)).

In *Bridgeport*, plaintiffs alleged copyright infringement of musical compositions by defendants, and defendants served plaintiffs' former attorney, a non-party, with a subpoena for documents, including various licensing agreements he had drafted. *Id.* at *1. The court held that the request did not impose an undue burden on the non-party attorney because the request was "relatively narrow." *Id.* at *2. The court contrasted this request with a subpoena issued in *Concord Boat Corp. v. Brunswick Corp.*, 169 F.R.D. 44, 50 (S.D.N.Y. 1996), "in which the subpoena at issue 'effectively encompass[ed] documents relating to every

[5] *See, e.g., Meeks v. Parsons*, No. 1:03-cv-6700, 2009 WL 3003718, at *8 (E.D. Cal. Sept. 18, 2009) ("[a] party that objects to a subpoena as overbroad or burdensome bears the burden of proving overbreadth or undue burden"); 9 James Wm. Moore, *et al.*, Moore's Federal Practice ¶ 45.51[4] (3d ed. 2009) ("A party objecting to a subpoena on the ground of undue burden generally must present an affidavit or other evidentiary proof of the time or expense involved in responding to the discovery request.").

transaction undertaken by [the party subject to the subpoena] for [the defendant] during the last ten years.'" *Bridgeport*, 2007 WL 4410405, at *2 (quoting *Concord Boat Corp.*, 169 F.R.D. at 50).

In *Bridgeport*, the plaintiffs contended that because the non-party lawyer's files were not indexed by date, and because he did not recall which files contained relevant agreements, the subpoena would "require him to go through 'hundreds of files' that are now in storage to determine which might contain relevant information" and "then require additional review to determine whether he had drafted or negotiated the agreement in question and whether the material was privileged," which could take "weeks[,] if not months." *Id.* The court was not persuaded that this qualified as an undue burden, however, when the subpoenaed documents were relevant and the request was "relatively narrow," with a limited time frame.[6] *Id.*

Similarly, in *Viacom Int'l, Inc. v. YouTube, Inc.*, No. C-08-80211, 2009 WL 102808 (N.D. Cal. Jan. 14, 2009), defendants in a copyright infringement action moved to compel non-party BayTSP to produce documents related to its work on behalf of plaintiffs in identifying examples of copyright infringement on defendants' website. *Id.* at *2. Defendants' subpoena had requested documents and communications concerning, among other things,

[6] Indeed, courts have upheld subpoenas covering time periods that were far more expansive than the four-plus years in the Subpoena. *LG Display Co.*, 2009 WL 223585, at *2 ("Although the time period covered by a subpoena is relevant in determining undue burden, the Court cannot say that eight years is burdensome.").

BayTSP's use and monitoring of YouTube and BayTSP's relationship with plaintiffs. *Id.* at *3. The court held that these requests were not unduly burdensome, despite BayTSP's complaints that initial searches yielded over one million documents and that it had "already expended over 1900 hours in the last six months searching and reviewing the documents." *Id.* at *5.

Under *Bridgeport* and *Viacom*, both of which involved document requests that were far more expansive than those propounded by Defendants here, the Subpoena is not overbroad or unduly burdensome. Here, the Subpoena requested communications concerning LimeWire or with the 13 specific Plaintiffs in this case on a limited number of topics (Kozusko Decl., Exs. 1, 4, 6, 12), and, as shown above, seeks documents that are clearly relevant to the factors applicable to statutory damages (*see* Issue III.A., *supra*). It is therefore not overbroad.

Further, Defendants have offered repeatedly to work with MySpace to minimize the burden on MySpace by pinpointing the types of communications that are most relevant to the issues to be tried, through the use of targeted search terms on the files of the custodians most likely to possess responsive documents. (*See, e.g.*, Kozusko Decl., Exs. 4-5, 12.) MySpace, however, would not agree to that offer and did not make any counter-proposal. (*See id.* ¶ 21.) That should not be permitted, especially where the Court presiding over the trial of the above action has already ordered another non-party to produce such documents. (*See id.*, Ex. 11.)

Indeed, MySpace has refused to produce documents under conditions involving a substantially lower burden than existed in either *Bridgeport or Viacom*. Specifically, MySpace's counsel claimed (without providing any facts to substantiate those claims) that the production of communications responsive to this Request of the Subpoena would require "dozens of hours" of his time, along with "days if not weeks" of time spent by MySpace's forensic information technology group. (Kozusko Decl. ¶ 21.) This relatively small time commitment -- certainly far less than the "weeks if not months" in *Bridgeport*, 2007 WL 4410405, at *2, or the "1900 hours" over "six months" in *Viacom*, 2009 WL 102808, at *5, neither of which the court held to be an undue burden -- is not sufficient to allow MySpace to escape its obligation under the Subpoena to produce documents that Judge Freeman has already deemed relevant to the underlying litigation (Kozusko Decl., Ex. 3 at 5-6). *See, e.g., Platinum Air Charters*, 2007 WL 121674, at *6 (compelling non-party to comply with subpoena because "[t]he mere fact that discovery requires work and may be time consuming is not sufficient to establish undue burden.").

Moreover, MySpace's repeated protestations of undue burden ring especially hollow given that it is part of News Corp., a publicly traded multinational company with assets of more than $56 billion, including the Fox empire and the *Wall Street Journal*, and concededly has a forensic information technology department with the ability to search for and collect potentially

responsive documents (*see id.* ¶ 21, Ex. 2 at 1[7]). *See Meeks*, 2009 WL 3003718, at *4 ("[a] recipient that is a large or complex organization or that has received a lengthy or complex document request should be able to demonstrate a procedure for systematic compliance with the document request.").

2. MySpace's Contentions and Points and Authorities

Courts weigh whether a burden to produce under a subpoena is "undue" by reference to a six-factor balancing test: (1) the relevance of the information requested; (2) the need of the party for production; (3) the breadth of the request for production; (4) the time period covered by the subpoena; (5) the particularity with which the subpoena describes the requested production; and (6) the burden imposed. *Televisa, S.A. De C.V. v. Univision Communications, Inc.*, No. CV 05-3444 PSG (MANx), 2008 WL 4951213 (C.D. Cal. Nov. 17, 2008), at *2. These factors favors mandate that production be denied here.

First, as discussed above, the relevance of the documents that Defendants have already obtained is "tenuous." The relevance of any additional production from MySpace is nonexistent. The absence of relevance by itself is sufficient ground to deny production.

Second, Defendants do not "need" these documents from MySpace; Plaintiffs already have been ordered to produce anything deemed relevant. In cases such as those cited by Defendants, *Bridgeport Music* and *Viacom*, the

[7] *See also* http://www.newscorp.com/investor/index.html; http://www.newscorp.com/operations/publishing.html.

documents at issue related closely to the core issues in dispute, and the proponent of third-party discovery lacked other means to obtain that information. Here, where Defendants should already have any relevant material from their adversaries in litigation, they cannot claim to "need" these documents again from MySpace.

With regard to the third, fourth, and fifth factors: the breadth of Document requests 2 and 6 is staggering. Document Request 2 seeks "all communications" with record companies with no time limitation. MySpace's contractual relationships with the major labels go back to at least early 2008, at the launch of MySpace Music, *see* Gottlieb Decl. ¶ 16, and Plaintiffs have signaled their intention to delve into information even older than that. *See supra* note 6 at 29 (referencing a "four plus year" time period). Substantial parts of MySpace's business – predominantly MySpaceMusic.com, with approximately 70 employees – work frequently with representatives of the major labels. In addition, many other employees and agents of MySpace, from time-to-time, assist on projects involving one or more of the major record companies. Gottlieb Decl. ¶ 16. Defendants' demand that MySpace produce every "communication" with a representative of a record company is not a reasonably particularized request.

Finally, the burden that Plaintiffs seek to impose on MySpace is immense. As noted immediately above, MySpace Music has dozens of employees who may communicate regularly, if not daily, with representatives of the music companies. In addition, there are, conservatively, tens of other MySpace

employees or agents who have communicated with the major record companies. Gottlieb Decl. ¶ 16.

Capture and review of electronic documents is an involved process. It requires, first, imaging and upload of the custodian's repositories of electronically stored information. Depending on the nature of those repositories and their size, capture may take anywhere from one to five hours per custodian of specialized personnel's time. Once the data are captured, they are typically uploaded and processed into searchable format. This process, again depending on size of the data, may take another one to two hours of specialized personnel's time, plus additional hours of computer processing time, during which the computers are unavailable to perform other tasks. Once the data are loaded, it is possible to run search terms to cull down the data to documents that contain a term or terms. After search terms are run, manual review by an attorney or paralegal is necessary to determine whether the search terms "hit" responsive documents or whether they obtained false positives, as is common with general search terms. Manual review is also necessary to determine whether a document is protected by attorney-client privilege or other protections. Depending on the size of the data set, manual review of documents can take hundreds or thousands of work-hours. Gottlieb Decl. ¶ 17.

Defendants' request would have necessitated capture and review of dozens of custodians' electronically stored information. The capture, by itself,

would have taken hundreds of hours and prevented the specialized technical personnel from performing their other essential duties, which includes assisting in the defense of cases brought against MySpace as a party. Even after uploading these data and running search terms, MySpace's counsel would have to find time to manually review the search results, which could run into the hundreds of hours. Plaintiff's purported efforts to compromise, proposing the "use of targeted search terms on the files of specific custodians," is unconvincing. The generic search terms that Plaintiffs propose – including words like "license," "contract," and "agreement" are likely to generate thousands, if not tens or hundreds of thousands, of "hits." Gottlieb Decl. ¶ 18. More specific identification of custodians or search terms is not likely, as Defendants are in search of documents helpful to their case; they do not seem to know specifically what they are looking for in any particularized way. Gottlieb Decl. ¶ 10, 18. The burden Plaintiffs seek to impose on MySpace is far greater, and the relevance far less, than in cases in which this Court has quashed a subpoena. *E.g., Televisa*, 2008 WL 4951213, at *3 (quashing subpoena where "[r]esponding to the document portion of the subpoena would require a substantial collection effort and would constitute thousands of pages of documents.").

Defendants' suggestion that MySpace should undertake this burden simply because it is part of a large corporation warrants little response. It is no justification to require a party to undertake a burden simply because it has

resources. Undertaking the burden that Defendants seek would impose massive costs on MySpace and detract essential personnel from their duties. In view of the nonexistent relevance of the material they seek, Plaintiffs have offered no justification to require MySpace to undertake that burden. In her November 19 order, Judge Wood recognized that the discovery Defendants sought was "potentially burdensome," but permitted it to go forward on a limited basis against Plaintiffs. Because the Federal Rules shield third parties from burden more carefully than parties to the litigation, Judge Wood's order suggests that imposing that burden is inappropriate here. Kozusko Decl. Ex. 10 at 6-7.

Rule 45(c) of the Federal Rules of Civil Procedure requires a proponent of a subpoena to "take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena" on pain of sanction. MySpace respectfully submits that Defendants' misconduct here justifies denial of their motion and imposition of a sufficient sanction to deter and punish.

IV. CONCLUSIONS.

A. Defendants' Conclusions.

In connection with preparing their defense at trial of copyright infringement claims for which Plaintiffs demand over $1 billion in damages, Defendants have sought the production of documents from MySpace, a non-party that provides digital music over the internet pursuant to contracts with Plaintiffs, including communications concerning both LimeWire and MySpace's agreements

with Plaintiffs. The Court that will try the above action has already ordered another non-party to produce such communications, holding them directly relevant to the issues to be tried early next year. MySpace, however, has refused to produce this category of documents, relying on objections that are deficient as a matter of law and unsubstantiated as a matter of fact. Indeed, MySpace has rebuffed Defendants' offer to use targeted search terms on the files of selected custodians in order to pinpoint documents most relevant to the issues to be tried and refused to make any counter-proposal at all.

MySpace's intransigence should not be permitted here, especially when it will deprive Defendants of documents directly relevant to their defense of damages claims that exceed $1 billion. Accordingly, this Court should enter an order compelling MySpace to produce promptly documents responsive to the Subpoena's Request for Production of Documents Nos. 2, 6.

B. MySpace's Conclusions.

Federal Rule of Civil Procedure 26 does not expand the scope of permissible discovery when substantial damages are at issue. Federal Rule of Civil Procedure 45 does not admit broader third-party discovery when Defendants' unlawful acts are egregious, widespread, long-term and wanton such as would give rise to the damages Defendants face in the underlying action. Rather, both rules impose reasonable and commonly accepted limits on third-party discovery. Such discovery must be relevant, it must not be unnecessarily cumulative, and it must

not impose an undue burden on a non-party.

Defendants' subpoena flunks each of these requirements. They have no cognizable theory of relevance to justify MySpace's production of internal documents, and no rationale why MySpace should have to produce the same documents that Defendants have already received from Plaintiffs. In lieu of such argument, Defendants resort to misinforming this Court of the record in the underlying proceeding, where the relevance of the documents they seek was deemed "potentially tenuous." For all its lack of relevance, Defendants' subpoena seeks to employ many individuals at MySpace working full-time for weeks to search through MySpace's documents in the hope that MySpace will find something to assist them in their defense. This is not how the drafters of Rule 45 intended it to work, and MySpace respectfully submits that this Court should deny Defendants' motion.

MySpace further requests that the Court issue a sanction against Defendants and/or their counsel in an amount not less than $12,500 pursuant to Rule 45(c) and Local Rule 37-4 to compensate MySpace for its counsel's time and to punish Defendants for their abusive tactics. Gottlieb Decl. ¶ 19-21. This request is based on –

1) Defendants' failure to follow the requirements of Local Rule 37-1; *see* Local Rule 37-4;

2) Defendants' treatment of Magistrate Judge Freeman's October 15

Order as law-of-the-case without citing Judge Wood's superseding 11/19/10 order;

3) Defendants' misleading presentation of Magistrate Judge Freeman's November 23, 2010 order regarding VEVO; and

4) Defendants' failure to undertake any meaningful effort to mitigate the burden on the recipients of its subpoenas, including MySpace and MediaDefender.

MySpace respectfully requests that, if the Court finds Defendants' conduct egregious, it order a sanction in a multiple of the amount requested above.

DATED: December 7, 2010

ROBERTS, RASPE & BLANTON LLP

By: /s/ Michael S. Blanton

Attorneys for Defendants Defendants Lime Wire LLC; Lime Group LLC; Mark Gorton; and M.J.G. Lime Wire Family Limited Partnership

DATED: January 5, 2010

FOX GROUP LEGAL

By: /s/ Jonathan Gottlieb

Attorneys for Non-Party MySpace, Inc.

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss:
CITY AND COUNTY OF LOS ANGELES)

I am employed in the City and County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Roberts, Raspe & Blanton LLP, Union Bank Plaza, 445 South Figueroa Street, Suite 3200, Los Angeles, California 90071.

On January 7, 2011, I caused the foregoing document(s) to be served:

JOINT STIPULATION REGARDING CENTRAL DISTRICT NON-PARTY SUBPOENA TO MYSPACE, INC.

on the interested parties, by placing a true and correct copy thereof in a sealed envelope(s) addressed as follows:

Jonathan Gottlieb, Esq.
Fox Group Legal
2121 Avenue of the Starts, Suite 700
Los Angeles, California 90067

Attorneys for Non-Party Respondent MySpace, Inc.

[X] **VIA PERSONAL DELIVERY:**
At the address listed above.

Glenn D. Pomerantz
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355 South Grand Avenue, 35th Floor
Los Angeles, CA 90071

Attorneys for Plaintiffs Arista Records LLC; Atlantic Recording Corp.; BMG Music; Capitol Records, Inc.; Elektra Entertainment Group Inc.; Interscope Records; Laface Records LLC; Motown record Company, L.P.; Priority Records LLC; Sony BMG Music Entertainment; UMG Recordings, Inc.; Virgin records America, Inc.; and Warner Bros. Records Inc.

[X] **VIA OVERNIGHT MAIL:**
VIA Federal Express: By delivering such documents to an overnight mail service or an authorized courier in an envelope or package designated by the express service courier addressed to the person(s) on whom it is to be served.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on January 7, 2011, at Los Angeles, California.

/s/ Melissa L. Gonzalez